IN THE

Supreme Court of the United States

No.

J. H. SCHAEFFER, JR. AND
OPAL R. SCHAEFFER, PETITIONERS,

VS.

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Come the petitioners and pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in the above entitled case.

"OPINIONS BELOW"

The opinion of the Tax Court is not officially reported but is a part of the certified record in this cause. The opinion of the Sixth Circuit, filed on August 20, 1958, is also a part of the Certified Record in this cause.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254 generally and in particular on the following grounds:

(1) The Court of Appeals for the Sixth Circuit has rendered a decision in this case which is in conflict with the decisions of other courts of appeals on the same matter. Keasby and Mattison Company vs. U.S.A., (CA 3rd 1944) 141 F. 2d 163, Johnson vs. Commissioner (CA 4th 1956) 233 F. 2d 952, Texas Trailer Coach Co. vs. Commissioner (Ca 5th 1958) ..... F. 2d ....., Glover vs. Commissioner (CA 8th 1958) ..... F. 2d ....., Baird vs. Commissioner, (CA 7th 1958) ..... F. 2d. .....

(2) The Court of Appeals for the Sixth Circuit in this case has decided an important question of Federal Law which has not been, but should be settled by this Court.

(3) This is a tax case and is based entirely on Federal Law.

QUESTION PRESENTED

During 1952 and 1953, petitioner, J. H. Schaeffer, Jr., sold notes, secured by conditional sales contracts to finance companies. The agreed price of such notes was paid petitioner immediately, and in addition, out of the finance charge, the finance companies credited to petitioner on their books a "loss reserve" account. The petitioners did not receive and had no right to receive any amount out of such "loss reserve" accounts during the calendar years 1952 and 1953.

The issue is whether a dealer selling tangible, personal property on a deferred payment plan and using the accrual system of accounting should be required to take into income credits made by the finance companies to the "loss reserve" account at the time such credits are entered on

the finance companies' books even though not available to petitioners.

STATEMENT OF FACTS

J. H. Schaeffer, Jr., and wife, Opal R. Schaeffer, were residents and citizens of Shelby County, Tennessee, in 1952 and 1953 (29a) and still are. They filed joint Federal Income Tax Returns for such years with the District Director of Internal Revenue in Nashville, Tennessee (13a).

During 1952 and 1953 J. H. Schaeffer, Jr., through his interest in J & S Motors, sold to Memphis Bank and Trust Company and Guardian Discount Company, related corporations doing business in Memphis, Tennessee (23a), and hereinafter sometimes referred to collectively as "Finance Company," certain installment notes received from purchasers of automobiles (23a, 32a). Coincident with the purchase of such notes Finance Company credited certain amounts, determined by contract or formulae, to at least two categories of reserve accounts in the name of J. H. Schaeffer, Jr., and/or J & S Motors on Finance Company's books (41a). One set of these accounts was identified as "Loss Reserve" accounts; the others were labeled "Special Reserve or Rebate" accounts. Amounts credited to the latter accounts were payable to appellant monthly, on or about the first day of the month following. By an agreement between Appellant and Finance Company which took effect on or about October 1, 1952, Finance Company withheld payment of the credits in Appellant's "Special Reserve or Rebate" accounts as additional security for Finance Company against possible losses on notes purchased from Appellant. By agreement between Schaeffer and Finance Company "Loss Reserve" accounts of Appellant were charge-

able with any and all losses and costs incurred by Finance Company in connection with or related to notes purchased from Appellant. No amounts were payable to Appellant out of such "loss Reserve" accounts until the balance of such accounts exceed 4% of the total value of outstanding and unpaid balances on all notes purchased from Appellant; no payment was to be made out of such accounts so long as any debt owed by Appellant to Finance Company was due and unpaid (24a, 25a).

Subsequent to audits by the Internal Revenue Service of Appellants' joint returns for 1952 and 1953, adjustments were proposed increasing appellants' net income for such years, principally based upon the net increases during 1952 and 1953 in the "Loss Reserve" accounts and the "Special Rebate" accounts on the books of Finance Company. The proposed increases (after being corrected subsequently by stipulation of the parties) are as follows (26a, 27a, 28a):

	Loss Reserve	Special Rebate	Total
1952	$ 4,064.29	$ 6,614.85	$10,679.14
1953	8,481.95	28,150.48	36,632.43
	$12,546.24	$34,765.33	$47,311.57

Appellants filed a protest with the Internal Revenue, and it and the subsequent conference with the Appellate Division were concerned solely with the increased tax liability resulting from the above-mentioned increases in Appellants' reserve accounts on the books of Finance Company. Appellants' position at that time being that no part of such increases represented taxable income during such years.

Appellants subsequently filed a timely petition in the Tax Court of the United States for a redetermination of deficiencies based on net increases in Appellants' reserve accounts. In an Amended and Supplemental Petition and in the Stipulation of Facts, Appellant has admitted and accepted liability for additional tax based upon the corrected net increases in the "Special Reserve or Rebate" accounts of J. H. Schaeffer, Jr., on the books of the Finance Company (27a, 28a). Appellant continued to deny liability for additional tax based upon increases during such years in "Loss Reserve" accounts of J. H. Schaeffer, Jr., and for J & S Motors on the books of Finance Company, since Petitioners did not receive and had no right to receive any amount out of such "Loss Reserve" accounts during the calendar years 1952 and 1953."

REASONS FOR GRANTING THE WRIT

The question in this case is the same as that presented in Commissioner v. John R. Hansen and Shirley G. Hansen, Commissioner v. Burl P. Glover, and Clifton E. Baird and Violet L. Baird v. Commissioner, Nos. 380, 381 and 512, October term, 1958, in which petitions for writs of certiorari were granted.

Writs having been granted in *Hansen, Glover* and *Baird*, this Court will soon have occasion to decide the issue involved in the instant case. The Court may wish to hold this petition in abeyance pending disposition on the merits in Nos. 380, 381 and 512 or this case may be consolidated for briefing and argument with the above cases presently pending before the Court.

Respectfully submitted.

JAMES F. SCHAEFFER
Attorney for Petitioners

APPENDIX A

Internal Revenue Code of 1939:

Sec. 22. Gross Income.

(a) **General Definition.**—"Gross income" includes gains, profits, and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. . . .

(26 U.S.C. 1952 ed., Sec. 22)

Sec. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (26 U.S.C. 1952 ed., Sec. 41.)

Sec. 42 (as amended by Sec. 114, Revenue Act of 1941, c. 412, 55 Stat. 687)

PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) General Rule. The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period.

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